IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP NO. 1116 of 2006

Reserved on : 18th June, 2007
Date of Decision: 20th June, 2007

Gurdhian Singh	Petitioner
Versus	
Secretary, HPSEB and another	Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]?

For the petitioner : Mr.Vikas Rathore, Advocate.

For the respondents: Mr.Shrawan Dogra, Advocate.

Sanjay Karol, J.

Petitioner has assailed the award dated 23.3.2006 passed by H.P. Industrial Tribunal cum Labour Court, Dharamshala, District Kangra, H.P. in Reference No. 93/2003 (RBT No. 418/04) , titled as Gurdhian Singh v. Resident Engineer, HPSEB, whereby petitioner's claim petition has been dismissed on the ground that his case is not maintainable on the plea of delay and laches.

Petitioner working as daily waged Beldar was employed with the respondents and his services were abruptly terminated with effect from 26th March, 1997. According to him, he immediately took up the matter with the authorities and requested them to either reinstate him or refer the matter to the concerned authorities for adjudication under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Whether the reporters of Local Papers are allowed to see the Judgment?

Petitioner has placed on record the demand notice dated 26.4.2002. In the said notice, it is clearly mentioned that petitioner had been pursuing his remedies inasmuch as demand notice dated 19th March, 1998 was sent by him, which was subsequently withdrawn as the petitioner had to file his case before the H.P. Administrative Tribunal. His matter was pending there and it was only when it was held that the Court did not have jurisdiction, petitioner withdrew the petition and again served the aforesaid demand notice. The response to the aforesaid demand notice has also been placed on record and that petitioner had been pursuing his remedies as aforesaid has not been specifically denied. From the aforesaid, it is thus clear that petitioner had been pursuing his remedies prior to the institution of the Reference Petition No. 93 of 2003. The matter was also pending before the Conciliation Officer for some time. This is sufficient ground on record to hold that the delay is explainable.

This Court in *Divisional Manager, HPFC and another vs Garibu Ram,* (CWP No.1542 of 2002), decided on 17th April, 2007, has already held that even though there is no statutory limitation for making a claim under the Act, however, the plea of delay and laches has to be seen in the facts and circumstances of each case. Unfortunately, the Court below has not considered the matter in this perspective and has, therefore, rejected the Reference of the petitioner and answered the same holding that the claim of petitioner is belated.

For the aforesaid reasons, award dated 23.3.2006 passed in Reference No.93/2003, titled as Gurdhian Singh vs. Resident Engineer, HPSEB, rejecting the claim petition only on the ground of delay and laches and limitation is set aside and the matter is consequently remanded back for adjudication to the Tribunal with the direction that after affording due opportunity to the parties the same shall be decided on all issues except

limitation/delay and laches. However, for the purposes of back wages, if any, the plea of delay may be considered by the Court.

It would be open for the parties to place on record additional material in support of their claims without unnecessarily delaying the matter. The Tribunal is directed to decide the matter, after affording opportunity of hearing within a period of 16 weeks from today.

Further, it would be open for the respondent – employee to independently take up the matter with the concerned authority who shall, keeping in view the averments made by him in the claim petition, sympathetically consider re-engagement of the respondent-employee in accordance with law.

No other point was raised or urged by the learned counsel for the parties.

With the above observations and directions, the writ petition is disposed of. All the Misc. applications are also disposed of.

Records of the case, if any, be sent back immediately and forthwith.

June , 2007
(C)

(Sanjay Karol),
Judge